

**Steeltech Manufacturing, Inc. and United Electrical,
Radio & Machine Workers of America (UE),
Petitioner.** Case 30–RC–5529

September 30, 1994

**DECISION AND DIRECTION OF
SECOND ELECTION**

BY MEMBERS DEVANEY, BROWNING, AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held November 22, 1993, and the hearing officer's report recommending disposition of them. Pursuant to a petition filed on October 25, 1993, the election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 41 for and 43 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, adopts the hearing officer's findings and recommendations to sustain the Petitioner's Objection VI(r) for the reasons set forth below, and finds that the election must be set aside and a new election ordered.¹

The Petitioner contends that the Employer's Code of Ethics and Business Conduct Manual (ethics manual) prohibits employees from exercising their Section 7 right to discuss their wages and benefits and provides for discipline for violations of the prohibition.²

The Employer is a metal fabrication and painting services contractor and performs work almost exclusively as a subcontractor to U.S. Defense Department prime contractors. Executive Vice President Arthur Gregg testified that Defense Department contractors are held to strict standards of business conduct, and that he therefore decided that the Employer should develop and issue an ethics manual. Gregg assigned the task to Human Resources Assistant Louise Barlow in June 1993³ but did not establish a timetable for its completion.

Substantial drafting and redrafting of the manual had been accomplished when, in mid-September, Barlow learned she would be transferred effective November 1 to another position with the Employer. The petition for the election was filed on October 25. The ethics man-

ual was completed and distributed to employees with their paychecks about November 9, at the height of the Union organizing drive. It contained the following provisions:

Section 2.1 DISCLOSURE OF COMPANY INFORMATION

STEELTECH's trade secrets, financial, and certain administrative information are valuable assets. Protection of this information is vital to our continued growth and our ability to compete. Under laws, this type of information is treated as intellectual property, usually in the form of information, knowledge, or know-how, the possession of which gives the owner some advantage over competitors who do not possess it. To be protected under law, such information must not be generally or publicly known or must be patented or copyrighted if publicly disclosed. STEELTECH's intellectual property assets are not always of a technical nature. Typical of such nontechnical information are:

STEELTECH business, new products or research plans.

Operating or marketing plans.

Program or product sales, profits, and/or pricing information

Salary, wage and benefits data. [Emphasis added.]

Employee, customer and vendor lists.

Information regarding customer requirements, preferences or plans except where such information is publicly available.

This list covers a wide scope of STEELTECH information that must be safeguarded. Such information is usually marked with a notice that imposes restrictions on the need to know within STEELTECH. *However, most of what we know about our own jobs and the jobs of others, even without the classifications, should remain with STEELTECH.* [Emphasis added.] If we leave the employ of STEELTECH, our legal obligation is to protect STEELTECH's intellectual property until it becomes clear that it has become publicly available, or that STEELTECH no longer considers it necessary to restrict its use. Correspondence, printed matter, documents or records of any kind, specific process knowledge, procedures, and special STEELTECH ways of doing things are all the property of and must remain within STEELTECH.

Part 3 CONFLICTS OF INTEREST

Section 3.1 GENERAL

You have the responsibility and are expected to avoid any activity that may infer a conflict of in-

¹ In the absence of exceptions we adopt, pro forma, the hearing officer's recommendations that Petitioner's remaining Objections I(b), (e), II(f), III(i), and V(n), be overruled.

² Petitioner's Objection VI(r) alleged that "[o]n or about November 9th, 1993, Steeltech made a unilateral change in terms and conditions of employment by implementing a Code of Ethics and Business Conduct Manual, which restricts employees' conduct while at work and outside the plant. Also it furnishes [sic] violations if the rules are violated." During the Regional Director's investigation of this objection, the issue was narrowed to the impact and timing of Sec. 2.1 of the ethics manual entitled "Disclosure of Company Information."

³ All dates are 1993.

terest. *Similarly, you may not use nor disclose confidential or proprietary information to any outside activity.* [Emphasis added.] A conflict of interest exists if certain of your outside interests may adversely affect your motivation or performance.

The test criteria includes not only whether you actually are improperly influenced, but whether the situation lends itself to improperly influencing you. A conflicting interest may unconsciously influence you, and the mere existence of that interest may cause the propriety of your acts to be questioned.

. . . .

Section 3.5 RESPONSIBILITY OF EMPLOYEES' RELATIVES

You should keep family members from doing anything that would be improper for you as an employee to do. In addition, *it is a good general rule not to discuss STEELTECH business with anyone, including relatives, who are not STEELTECH employees.* [Emphasis added.] Members of your immediate family should also be asked not to discuss STEELTECH business in the presence of others.

Section 1.2.5 COMPLIANCE AND DISCIPLINARY ACTION

. . . .

Failure to comply with our standards will result in disciplinary action that may include reprimand; loss of compensation, seniority, or promotional opportunities; demotions; discharge; referral for criminal prosecution; or reimbursement to STEELTECH or the Government for any losses or damages resulting from the violation. As with all matters involving disciplinary action, principles of fairness will apply. Any employee charged with a violation will be afforded an opportunity to explain their actions before disciplinary action is taken.

Disciplinary action may be taken against employees who authorize or participate in actions which are a violation.

Disciplinary action may be taken against any employee who has deliberately failed to report a violation.

The Employer asserted a two-fold purpose for issuing the ethics manual. First, it wished to promulgate enforceable standards of business integrity and honesty. It also wanted to protect salary information which, if disclosed, would give its competitors an unfair advantage in bidding for government work.

The hearing officer was not persuaded that the Employer's reasons for prohibiting disclosure of salary information constituted sufficient business justification to outweigh the Section 7 rights of employees to discuss salary information with each other or with a union. She noted that the Employer produced no examples in which employees' disclosure of their salary information imperiled the Employer's bidding process. She also noted that the Employer failed affirmatively to inform employees of their Section 7 right to discuss salary information with each other or with a union, without fear of being disciplined for doing so. Thus, she found that employees reasonably could construe the above-cited provisions as a prohibition against sharing salary information with other employees or with a union. Noting also the closeness of the vote and the proximity of the publication of the new rules to the date of the election, the hearing officer found that the Employer's issuance of the rules was objectionable conduct warranting the setting aside of the election.

Although we do not agree with the hearing officer that the ethics manual prohibits employees from discussing wages and benefits *among themselves*, we do agree with her that sections 2.1, 3.1, and 3.5 of the manual have a reasonable tendency to coerce or interfere with employees in the exercise of their right to discuss wages and benefits with a union.⁴

The rules in question expressly prohibit employees from disclosing wage information to, or discussing it with, persons not employed by Steeltech, a prohibition that clearly encompasses union representatives. Section 2.1 includes wages, salaries, and benefits within its definition of proprietary information and instructs employees that "[s]alary, wage and benefits data . . . [are] STEELTECH information that must be safeguarded . . . most of what we know about our own jobs and the jobs of other, even [if not classified] should remain with STEELTECH." Section 3.1 warns employees that "you may not use nor disclose confidential or proprietary information to any outside activity." Section 3.5 reiterates that "it is a good general rule not to discuss STEELTECH business with anyone, including relatives, who are not STEELTECH employees." Section 1.2.5 makes clear the consequence faced by an employee who disseminates wage information:

[F]ailure to comply with our standards *will* result in disciplinary action that may include reprimand; loss of compensation, seniority, or promotional opportunities; demotions; discharge; referral for criminal prosecution; or reimbursement . . . for

⁴ *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990); *Texas Instruments*, 236 NLRB 68 (1976), *enfd.* in pertinent part 599 F.2d 1067 (1st Cir. 1979). See also *Radisson Plaza Minneapolis*, 307 NLRB 94 (1992), *enfd.* 987 F.2d 1376 (8th Cir. 1993); *Waco, Inc.*, 273 NLRB 746 (1984).

any losses or damages resulting from the violation. [Emphasis added.]

Thus, we find that, based on this language, employees reasonably could have felt constrained not to exercise their right to confer with a union about wages, salaries, and benefits.

We need not rely solely on the provisions in the manual, however. We also find it significant that the Employer issued the ethics manual during the critical period, just 2 weeks before the election. The very timing of the manual's issuance created a heightened tendency that the rules would coerce or interfere with employees in the exercise of their Section 7 right to discuss their wages and benefits with the Union.

We also note that the vote in the election was close. As the hearing officer pointed out, if only 3 voters in the unit of approximately 90 had read the cited sec-

tions of the manual—and employees were likely to have done so because the manual was distributed with their paychecks—and believed that consulting with the Union about their wages and benefits would result in disciplinary action, the laboratory conditions for the election would have been affected.⁵

Under all these circumstances, we find that by issuing its ethics manual effectively prohibiting employees from discussing their wages and benefits with the Union, the Employer engaged in objectionable conduct. Accordingly, we sustain Petitioner's Objection VI(r), set aside the election, and order that a new election be conducted.

[Direction of Second Election omitted from publication.]

⁵ In fact, a shift of two voters would have changed the result.